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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,595	08/03/2001	John D. Widdemer	P-01179	7675

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EXAMINER

SALVATORE, LYNDIA

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/922,595

Applicant(s)

WIDDEMER, JOHN D.

Examiner

Lynda M Salvatore

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 27 December 2001.

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-11 and 17-36 is/are pending in the application.

4a) Of the above claim(s) 12-16 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-11 and 17-36 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.205(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) ☐ Interview Summary (PTO-413) Paper No(s). _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-11 and 17-36 drawn to an improved leather article classified in class 428, subclasses 15 and 16.

II. Claims 12-16 drawn to a method for making an improved leather article classified in class 69, subclass 21.

2. The inventions are distinct, each from the other because:

Inventions of Group I and II are related as process of making and product made and are inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the method of needlepunching may be employed to provide a variety of composite materials such as those made from cellulosic or synthetic fibers.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Peter Aufrichtig on June 10, 2003 a provisional election was made without traverse to prosecute the invention of an improved leather article claims 1-11 and 17-36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Applicant is advised that the reply to this requirement to complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5, 11, and 17-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakamae et al., US 4,426,421

The patent issued to Nakamae et al., teaches a multi-layer composite sheet useful as an artificial leather substrate (Abstract). The composite sheet comprises a superficial layer consisting of a spun-laid web of fine fibers an intermediate staple non-woven web layer and a woven or knitted layer (Abstract). Nakamae et al., teaches that the layer consisting of fine fibers is converted into the superficial layer of the artificial leather (Column 4, 55-60). Nakamae et al., teaches raising or coating the superficial layer with an elastic polymeric material to provide either a suede-like or grain-like artificial leather (Column 9, 39-60). In this instance, the

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Examiner is considering the superficial layer analogous to the instantly claimed leather matrix material. The intermediate layer comprises a non-woven which is entangled to penetrate a portion of the superficial layer (Column 5, 10-15). With regard to claims 11 and 17-20 Nakamae et al., teaches that the leather composite material is particularly useful as clothing, With regard to claims 21-24, 29-32, and 33-36 Nakamae et al., fails to teach the intended use of a shoe, an upholstered item and a luggage item, however, since the prior art meets the structural and chemical limitations set forth with it reasonable to presume that said leather composite material would perform equally as well in the above aforementioned capacities. Therefore, said intended use limitation set forth in claims 21-24, 29-32 and 33-36 are not given patentable weight since there is nothing on record to evidence that said leather composite material would not perform equally as a shoe, an upholstered item or a luggage item.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamae et al., US 4,426,421 as applied to claim 1 above and further in view of Spies et al., US 4,696,999.

Nakamae et al., fails to teach adding material to the intermediate non-woven layer to provide enhanced tear resistance, abrasion resistance, and temperature regulation, however, the patent issued to Spies et al., teaches a polyamide composition which may be further processed

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into fibers and films (Column 3, 7-10). Spies et al., teaches that the polyamide based fibers and films exhibit high temperature and tear resistance as well as having a high degree of wear by extreme strain (i.e., abrasion resistance). Therefore, motivated to provide a leather having enhanced tear resistance, abrasion resistance, and temperature regulation, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the polyamide-based fibers taught by Spies et al., into the intermediate non-woven fiber layer of Nakamae et al.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamae et al., US 4,426,421 as applied to claim 1 above and further in view of Spies et al., US 4,696,999.

Nakamae et al., fails to teach incorporating far infrared enhancing materials to the intermediate non-woven layer, however the patent issued to Magata teaches a far infrared metal oxide containing composite fiber (Title and Abstract). Magata discloses that the far infrared radiation released from the metal oxides is emitted in close contact with the human body to provide warmth (Abstract).

Therefore, motivated to provide a leather article capable of providing warmth it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the far infrared composite fiber taught by Magata into the intermediate non-woven layer of Nakamae et al.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamae et al., US 4,426,421 as applied to claim 1 above and further in view of Wildbore et al., US 6,555,490.

Nakamae et al., fails to teach incorporating materials to improve the wicking properties of the intermediate non-woven layer, however, the patent issued to Wildbore et al., teaches a

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
non-woven lining article having grooved or multi-lobed cross sectional fibers for improved wicking (Column 1, 57-60). Therefore, motivated to provide a leather article having wicking properties it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the grooved or multi-lobed fibers taught by Wildbore et al., into the intermediate non-woven layer of Nakamae et al. Since Nakamae et al., explicitly teaches providing a leather composite material which is particularly useful as clothing it reasonable conclude that one of ordinary skill in the art would be motivated to impart wicking capabilities to said composite material.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

ls. 
June 30, 2003


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700